

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Reynolds Circle, LLC, a California
Limited Liability Company;
Grill 'Em Pizza, Inc., a California
Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Reynolds Circle, LLC, a California Limited Liability Company; Grill 'Em Pizza, Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1 2. Defendant Reynolds Circle, LLC owned the real property located at or
2 about 497 Reynolds Circle, San Jose, California, between July 2020 and
3 February 2021.

4 3. Defendant Reynolds Circle, LLC owns the real property located at or
5 about 497 Reynolds Circle, San Jose, California, currently.

6 4. Defendant Grill 'Em Pizza, Inc. owned Grill Em' Pizza & Sports Bar
7 located at or about 497 Reynolds Circle, San Jose, California, between July
8 2020 and September 2020.

9 5. Defendant Grill 'Em Pizza, Inc. owns Grill Em' Pizza & Sports Bar
10 ("Restaurant") located at or about 497 Reynolds Circle, San Jose, California,
11 currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein is
17 responsible in some capacity for the events herein alleged, or is a necessary
18 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
19 the true names, capacities, connections, and responsibilities of the Defendants
20 are ascertained.

21
22 **JURISDICTION & VENUE:**

23 7. The Court has subject matter jurisdiction over the action pursuant to 28
24 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
25 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California's Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5
6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Restaurant in July 2020 and September 2020 with
8 the intention to avail himself of its goods or services motivated in part to
9 determine if the defendants comply with the disability access laws. Not only
10 did Plaintiff personally encounter the unlawful barriers in July 2020 and
11 September 2020, but he wanted to return and patronize the business several
12 times but was specifically deterred due to his actual personal knowledge of the
13 barriers gleaned from his encounter with them.

14 11. The Restaurant is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed
17 to provide wheelchair accessible parking in conformance with the ADA
18 Standards as it relates to wheelchair users like the plaintiff.

19 13. The Restaurant provides parking to its customers but fails to provide
20 wheelchair accessible parking in conformance with the ADA Standards.

21 14. A few problems that plaintiff encountered was that there were not
22 enough parking spaces for wheelchair users in the parking lot. There were
23 nearly 300 parking spaces on the property and only two parking spaces were
24 ostensibly reserved for persons with disabilities. Additionally, of the two ADA
25 parking spaces at the property, one of the parking stalls and access aisles
26 marked and reserved for persons with disabilities had slopes that exceeded
27 2.1%. Moreover, the other parking space ostensibly reserved for persons with
28 disabilities was faded and not maintained.

1 15. Plaintiff believes that there are other features of the parking that likely
2 fail to comply with the ADA Standards and seeks to have fully compliant
3 parking for wheelchair users.

4 16. On information and belief, the defendants currently fail to provide
5 wheelchair accessible parking.

6 17. Additionally, on the dates of the plaintiff's visits, the defendants failed
7 to provide wheelchair accessible dining surfaces in conformance with the ADA
8 Standards as it relates to wheelchair users like the plaintiff.

9 18. The Restaurant provides dining surfaces to its customers but fails to
10 provide wheelchair accessible dining surfaces.

11 19. One problem that plaintiff encountered was the lack of sufficient knee
12 or toe clearance under the dining surfaces for wheelchair users.

13 20. Plaintiff believes that there are other features of the dining surfaces that
14 likely fail to comply with the ADA Standards and seeks to have fully compliant
15 dining surfaces for wheelchair users.

16 21. On information and belief, the defendants currently fail to provide
17 wheelchair accessible dining surfaces.

18 22. These barriers relate to and impact the plaintiff's disability. Plaintiff
19 personally encountered these barriers.

20 23. As a wheelchair user, the plaintiff benefits from and is entitled to use
21 wheelchair accessible facilities. By failing to provide accessible facilities, the
22 defendants denied the plaintiff full and equal access.

23 24. The failure to provide accessible facilities created difficulty and
24 discomfort for the Plaintiff.

25 25. The defendants have failed to maintain in working and useable
26 conditions those features required to provide ready access to persons with
27 disabilities.

28 26. The barriers identified above are easily removed without much

1 difficulty or expense. They are the types of barriers identified by the
2 Department of Justice as presumably readily achievable to remove and, in fact,
3 these barriers are readily achievable to remove. Moreover, there are numerous
4 alternative accommodations that could be made to provide a greater level of
5 access if complete removal were not achievable.

6 27. Plaintiff will return to the Restaurant to avail himself of its goods or
7 services and to determine compliance with the disability access laws once it is
8 represented to him that the Restaurant and its facilities are accessible. Plaintiff
9 is currently deterred from doing so because of his knowledge of the existing
10 barriers and his uncertainty about the existence of yet other barriers on the
11 site. If the barriers are not removed, the plaintiff will face unlawful and
12 discriminatory barriers again.

13 28. Given the obvious and blatant nature of the barriers and violations
14 alleged herein, the plaintiff alleges, on information and belief, that there are
15 other violations and barriers on the site that relate to his disability. Plaintiff will
16 amend the complaint, to provide proper notice regarding the scope of this
17 lawsuit, once he conducts a site inspection. However, please be on notice that
18 the plaintiff seeks to have all barriers related to his disability remedied. See
19 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
20 encounters one barrier at a site, he can sue to have all barriers that relate to his
21 disability removed regardless of whether he personally encountered them).

22
23 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
24 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
25 Defendants.) (42 U.S.C. section 12101, et seq.)

26 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
27 again herein, the allegations contained in all prior paragraphs of this
28 complaint.

1 30. Under the ADA, it is an act of discrimination to fail to ensure that the
2 privileges, advantages, accommodations, facilities, goods and services of any
3 place of public accommodation is offered on a full and equal basis by anyone
4 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
5 § 12182(a). Discrimination is defined, inter alia, as follows:

- 6 a. A failure to make reasonable modifications in policies, practices,
7 or procedures, when such modifications are necessary to afford
8 goods, services, facilities, privileges, advantages, or
9 accommodations to individuals with disabilities, unless the
10 accommodation would work a fundamental alteration of those
11 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 12 b. A failure to remove architectural barriers where such removal is
13 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
14 defined by reference to the ADA Standards.
- 15 c. A failure to make alterations in such a manner that, to the
16 maximum extent feasible, the altered portions of the facility are
17 readily accessible to and usable by individuals with disabilities,
18 including individuals who use wheelchairs or to ensure that, to the
19 maximum extent feasible, the path of travel to the altered area and
20 the bathrooms, telephones, and drinking fountains serving the
21 altered area, are readily accessible to and usable by individuals
22 with disabilities. 42 U.S.C. § 12183(a)(2).

23 31. When a business provides parking for its customers, it must provide
24 accessible parking.

25 32. Here, accessible parking has not been provided in conformance with the
26 ADA Standards.

27 33. When a business provides facilities such dining surfaces, it must provide
28 accessible dining surfaces.

1 34. Here, accessible dining surfaces have not been provided in
2 conformance with the ADA Standards.

3 35. The Safe Harbor provisions of the 2010 Standards are not applicable
4 here because the conditions challenged in this lawsuit do not comply with the
5 1991 Standards.

6 36. A public accommodation must maintain in operable working condition
7 those features of its facilities and equipment that are required to be readily
8 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

9 37. Here, the failure to ensure that the accessible facilities were available
10 and ready to be used by the plaintiff is a violation of the law.

11
12 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
13 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
14 Code § 51-53.)

15 38. Plaintiff repleads and incorporates by reference, as if fully set forth
16 again herein, the allegations contained in all prior paragraphs of this
17 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
18 that persons with disabilities are entitled to full and equal accommodations,
19 advantages, facilities, privileges, or services in all business establishment of
20 every kind whatsoever within the jurisdiction of the State of California. Cal.
21 Civ. Code §51(b).

22 39. The Unruh Act provides that a violation of the ADA is a violation of the
23 Unruh Act. Cal. Civ. Code, § 51(f).

24 40. Defendants’ acts and omissions, as herein alleged, have violated the
25 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
26 rights to full and equal use of the accommodations, advantages, facilities,
27 privileges, or services offered.

28 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

1 discomfort or embarrassment for the plaintiff, the defendants are also each
2 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
3 (c).)

4 42. Although the plaintiff encountered frustration and difficulty by facing
5 discriminatory barriers, even manifesting itself with minor and fleeting
6 physical symptoms, the plaintiff does not value this very modest physical
7 personal injury greater than the amount of the statutory damages.
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12 **PRAYER:**

13 Wherefore, Plaintiff prays that this Court award damages and provide
14 relief as follows:

15 1. For injunctive relief, compelling Defendants to comply with the
16 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
17 plaintiff is not invoking section 55 of the California Civil Code and is not
18 seeking injunctive relief under the Disabled Persons Act at all.


19 2. For equitable nominal damages for violation of the ADA. See
20 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
21 and any other equitable relief the Court sees fit to grant.

22 3. Damages under the Unruh Civil Rights Act, which provides for actual
23 damages and a statutory minimum of \$4,000 for each offense.

24 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
25 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.
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27
28

1 Dated: May 6, 2021

CENTER FOR DISABILITY ACCESS

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3 By: 

4 Amanda Seabock, Esq.
5 Attorney for plaintiff
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